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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,648	01/20/2004	Fred P. Smith	3339.2.1	1015

28049 7590 12/19/2006  
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SALT LAKE CITY, UT 84111

EXAMINER
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KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/19/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/760,648

Applicant(s)

SMITH, FRED P.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 October 2006 and 10 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/10/06 has been entered.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitations of "carrying ..., passing ..., and returning ... during ... motion of the vehicle" appears to require a method step or operation to be performed, which is indefinite in an apparatus claim. The scope of this claim is therefore unclear in that the metes and bounds of the invention can not be determined.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-5, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Safko (of record).

Safko shows a pickup truck having a bed in which is placed a flexible cargo carrying member 5 (first portion) having second portions 3, 4 extending therefrom such that in use they are placed under the rear wheels of the vehicle and captured thereby so that as the vehicle is backed up the member 5 is drawn rearwardly to discharge cargo in the bed. Safko also discloses an alternative embodiment where the member 5 is replaced by a simple mat (col. 2, lines 6-8).

Applicant has amended claims 1 and 11 to require the first portion to completely cover the cargo area (which both member 5 and the mat do) and the second portion to connect to the first portion "proximate the second end" (of the cargo area) and extend "a length sufficient to pass around the second end to a location of capture between the at least one wheel and the supporting surface". Applicant argues that because the second portions 3, 4 of the flexible member 5 of Safko are connected to the end of the first portion proximate the front end of the cargo area but extend around the back end of the cargo area, these claim limitations are not met. This is not persuasive. First, the embodiment in which a mat is used in place of the member 5 is believed to meet the claim limitations, because the second portions of the flexible member would inherently have to be connected to the end of the first portion proximate the rear or "second" end of the cargo area. Applicant argues that there is no basis for this assumption, stating that even in this embodiment, it must be assumed that the mat functions in the same manner as the member 5. However, the mat could not function properly if the second

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portions 3, 4 were connected to the end proximate the front of the cargo area, because in use the portions 3, 4 would simply pull the front end of the mat out from underneath the load, due to the insufficient rigidity of the mat. However, even if the mat embodiment is found to not anticipate the claims, the examiner remains of the opinion that the primary embodiment does. This is because the claims do not define the first or second ends of the cargo area, nor are they limited to a particular wheel. Since the claims require the second portion to connect to the first portion of the flexible member proximate the second end of the cargo area, this would mean the second end of Safko's cargo bed must be the front. However, the claims merely require the second portion to have a length "sufficient" to pass around the second end to a location of capture. At 13 feet, the portions 3, 4 of Safko clearly have a length "sufficient", as broadly claimed, to pass around the front (i.e. second) end of the cargo area to a location of capture between at least one wheel and the supporting surface (i.e., either around the entire front end of the vehicle to a front wheel, or passing through the gap between the cab and the cargo bed to either a front or rear wheel). It is noted that even though Safko does not actually show the portions 3, 4 doing this, they do not have to, but instead merely have to be capable of doing so. Applicant may also argue that Safko wouldn't work as intended if the portions 3, 4 were routed this way, but again, it wouldn't have to. The claims don't require the second portion to have any particular functionality; it merely has to be a "sufficient" length.

Re claims 2, etc., either the top edge of the front end of the cargo area or the rear bumper of the vehicle (depending on the embodiment) is considered a "friction

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reducing member", as broadly claimed, which would inherently be made of wood, metal, or some type of plastic polymer, elastomer, or composite.

Re claim 9, the flexible member is made from canvas, which is a fiber.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safko.

Re claim 6, although Safko does not disclose the friction reducing member as being made from polyethylenes or fluoropolymers, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Safko such that the friction reducing member was made from one of these materials, as it has been held that selecting a known material on the basis of its suitability for the intended use is an obvious matter of design choice.

Re claim 16, Safko shows the method essentially as claimed (particularly the mat embodiment) except that there is no explicit disclosure that a length of the first portion (i.e., the mat) passes under the second end of the cargo area during unloading. Insofar as the mat embodiment is believed to inherently require the second portions to be connected to the mat adjacent the rear or second end of the cargo bed, it would have

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been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of using Safko's apparatus such that a length of the first portion of the flexible member (the mat) passed under the second end of the cargo bed during unloading, as this would merely be an expedient means of discharging material from the mat. Note that the primary embodiment discloses (col. 1, lines 45-50) that the vehicle continues to be backed up in stages as material is removed from the cargo unit. Performing the same operation with the mat embodiment would virtually require a portion of the mat to pass under the second end of the cargo area, as that is the only way material at the front end of the mat could be accessed.

Re claim 19, although the portions 3, 4 are used to form a tailgate rather than covering the load, using these portions to additionally cover the load would have been obvious for one of ordinary skill in the art, as this would simply be a well known safety and security measure.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Safko in view of Pierce (US 4,212,581, previously of record).

The friction reducing member of Safko is not a roller.

Pierce shows a pickup truck wherein a roller is attached to the rear end of the cargo area thereof to reduce friction when materials are loaded or unloaded to or from the bed.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified Safko with a roller as the friction reducing member, as

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suggested by Pierce, as this would improve the unloading operation. Note that the claims do not require the friction reducing member to reduce friction in any particular manner or between any particular elements.

9. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safko in view of Pierce, as applied to claim 7 above, and further in view of Kellogg (of record).

Safko as modified does not show the roller to comprise multiple sections.

Kellogg shows a similar truck-mounted roller comprising multiple sections 56, 58.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified Safko such that the roller comprised multiple sections, as shown by Kellogg, as this would be a mere duplication of parts which has been held to involve only routine skill.

Re claim 10, again, the selection of a known material on the basis of its suitability for the intended use is an obvious matter of design choice.

10. Claims 1-5, 9, 11, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanMatre (US 5,156,518) in view of Safko.

VanMatre shows a truck bed unloading device comprising a flexible member 40 disposed in a cargo area, the member having a first portion 40c completely covering (at least initially) the cargo area and a second portion extending from the first portion,



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passing around the second end of the cargo area (including the tailgate) to a location of capture forwardly of the second end.

The location of capture is an underside of the vehicle but is not between a wheel and the supporting surface.

As noted previously, the second portion of the flexible member of Safko extends around the rear of the vehicle to a location of capture between a wheel and the supporting surface.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of VanMatre by extending the length of the second portion to a sufficient extent such that a wheel or wheels of the vehicle could be utilized as the location of capture of the second portion of the flexible member, as shown by Safko, as this would preclude the necessity of providing particular connection elements (e.g., 41, 42) on the vehicle and flexible member.

11. Claims 7, 8, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanMatre in view of Safko, as applied to claims 1-5 and 11 above, and further in view of Kellogg.

The modified apparatus of VanMatre does not show a roller extending from the edge of the tailgate.

As noted above, Kellogg shows a roller mounted on a tailgate.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of VanMatre by utilizing a roller

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extending from the edge of the tailgate, as shown by Kellogg, as this would allow improved loading operation for large objects (see figs. 3, 4 of Kellogg) when the unloading device of VanMatre is not in use and removed from the vehicle (which is explicitly disclosed as a desirable feature of VanMatre's invention (col. 1, lines 26-30).

12. Applicant's arguments filed 10/4/06 have been fully considered but they are not persuasive. All arguments pertinent to previously presented rejections have been addressed above.

13. Applicant's arguments with respect to those claims not specifically argued above have been considered but are moot in view of the new ground(s) of rejection.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. The examiner can normally be reached on (schedule varies).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "James Keenan", is positioned above the printed name.

James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
12/13/06